

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GEOFFREY ROBERT LAWSON SR.,

Petitioner,

v.

JAMES KEY,

## Respondent.

Case No. C18-5998-RBL-TLF

**ORDER DENYING MOTIONS  
FOR: APPOINTMENT OF  
COUNSEL, TO DIRECT  
DEFENDANTS TO RETURN A  
COMPUTER; AND ORDER  
GRANTING A LIMITED  
EXTENSION OF TIME**

Petitioner proceeds pro se in this habeas corpus action pursuant to 28 U.S.C. § 2254. This matter is before the Court on petitioner's motion seeking an order directing prison officials to provide him with a copy of his 3/30/2020 pleading (Dkt. 32) and motion seeking a fourth 180 extension of time to file his response, ordering prison authorities to provide petitioner with the possession and use of his personal laptop, and appointment of counsel (Dkt. 33). For the reasons set forth below, petitioner's motions are DENIED, except the motion for extension of time is PARTIALLY GRANTED: He is granted an extension of time to **June 26, 2020**, to file his response.

## BACKGROUND

Petitioner filed his habeas corpus petition pursuant to 28 U.S.C. § 2254 in September 2018. Dkt. 1. On January 28, 2019, respondent filed his answer and memorandum of authorities as well as the relevant state court record. Dkts. 17, 18. On February 14, 2019, petitioner moved for a 180-day extension of time to file his response to respondent's answer. Dkt. 19. That motion was granted. Dkt. 20. On April 16, 2019, petitioner moved for a preliminary injunction directing prison officials to provide him

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1 access to his personal laptop and accessories. Dkt. 21. Petitioner's motion was denied  
2 by order dated July 9, 2019. Dkt. 24. In August 2019, petitioner moved for a second  
3 180-day extension to file his response on the grounds that his time in the law library was  
4 limited and that his ability to work on his response was additionally limited by the fact  
5 that he is undergoing medical treatment for cancer. Dkt. 26. That motion was granted.

6 On January 13, 2020, the petitioner moved for a third 180-day extension to file  
7 his response. Dkt. 29. By order dated February 3, 2020, the Court found that petitioner  
8 had failed to establish good cause warranting a third 180 extension but granted  
9 petitioner a final limited extension of time, until March 30, 2020, to respond to  
10 respondent's answer. Dkt. 31.

11 The Court also warned petitioner that no further extensions of time would be  
12 granted except upon a showing of good cause. *Id.* Regarding the showing of good  
13 cause warranting a further extension, the Court advised petitioner that he must set forth  
14 a detailed explanation as to why he has been unable to respond specifically to the  
15 allegations in respondent's answer (which are limited to the issue of timeliness of the  
16 petition) despite being given numerous substantial extensions of time in which to do so.

17 *Id.*

18 On April 3, 2020, petitioner filed a motion seeking an order directing prison  
19 officials to provide him with a copy of his 3/30/2020 pleading. Dkt. 32. Respondent  
20 submits evidence that pleading was subsequently provided to petitioner. Dkt. 36. On  
21 April 6, 2020, petitioner filed a fourth motion seeking another 180-day extension of time  
22 to file his response. Dkt. 33. Petitioner also asks the Court to order the prison authorities  
23 to provide petitioner with the possession and use of his personal laptop, and petitioner

1 seeks an order appointing counsel. *Id.* Respondent takes no position on petitioner's  
2 request for an extension of time but opposes his requests for an order directing prison  
3 authorities to give him his laptop and opposes the request for appointment of counsel.  
4 Dkts. 35, 36.

5 **DISCUSSION**

6 **A. Motion Seeking Copy of 3/30/20 Pleading**

7 Petitioner moves for an order directing prison officials to provide him with a copy  
8 of his 3/30/2020 pleading. Dkt. 32. Respondent submits evidence that a copy of this  
9 pleading was provided to petitioner on April 14, 2020. Dkt. 36. Accordingly, petitioner's  
10 motion (Dkt. 32) is denied as moot.

11 **B. Possession of Laptop**

12 Petitioner asks the Court to order the prison authorities to provide him with the  
13 possession and use of his personal laptop, battery, mouse, thumb-drive, and carrying  
14 case, which he claims is already in the possession of the DOC, as well as installation of  
15 DOC's version of Lexis Nexis and Westlaw's "static" on the laptop computer.  
16 Alternatively, petitioner requests appointment of counsel. Dkt. 33.

17 Petitioner argues he is undergoing cancer treatment and that the side effects  
18 impact his ability to work on his case. *Id.* He also asserts beginning March 23, 2020, he  
19 has been in mandatory indefinite lockdown due to the COVID-19 pandemic. *Id.* He  
20 asserts he has no access to the law library or materials from the law library and is  
21 unable to file documents electronically. *Id.* He asserts that beginning in August of 2019,  
22 he was forbidden from taking respondent's answer into the law library due to its size,  
23 the law library was only available two days per week averaging less than two hours per

1 day and that on many days he was too ill to go to the library. *Id.* He also argues the  
2 “magnitude” of the constitutional claims raised by his case overcome the time-bar and  
3 that he therefore requires substantial time in the law library. *Id.*

4 Respondent contends that petitioner’s request for an order directing officials to  
5 provide him with his laptop is improper within this habeas corpus proceeding because  
6 such relief is not an available remedy under 28 U.S.C. § 2254. Dkt. 22. This argument is  
7 persuasive. A habeas corpus action is “the proper mechanism for a prisoner to  
8 challenge” the fact or duration of his confinement. *Badea v. Cox*, 931 F.2d 573, 574 (9th  
9 Cir. 1991); *Tucker v. Carlson*, 925 F.2d 330, 332 (9th Cir. 1991); *Crawford v. Bell*, 599  
10 F.2d 890, 891 (9th Cir. 1979). On the other hand, a claim challenging a prisoner’s  
11 conditions of confinement is properly brought under 28 U.S.C. § 1983. See *McCarthy v.*  
12 *Bronson*, 500 U.S. 136, 141-142 (1991); *Preiser v. Rodriguez*, 411 U.S. 475, 499  
13 (1973); see *Malchi v. Thaler*, 211 F.3d 953, 958 (5th Cir. 2000) (interpreting *Preiser*).

14 Here petitioner seeks relief related to his conditions of confinement—his access to  
15 legal research and resources—and not on a challenge to the fact or duration of his  
16 confinement. The relief he requests is not within the scope of relief under 28 U.S.C.  
17 Section 2254 on federal habeas review.

18 The Court also notes that petitioner’s request is not in the nature of a preliminary  
19 injunction which is designed to preserve the *status quo ante litem* pending a determination  
20 of the action on the merits. *Los Angeles Memorial Coliseum Com’n v. National Football*  
21 *League*, 634 F.2d 1197, 1200 (9th Cir. 1980). Here petitioner is not seeking to preserve  
22 the status quo but, rather, is seeking increased access to additional legal resources and  
23 materials.

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1 To the extent the petitioner is trying to use his request for access to his personal  
2 laptop as a persuasive argument to justify his motions for counsel and for another  
3 extension of time, there is no merit to that argument. Contrary to petitioner's assertion  
4 that he has not had access to library materials due to the lockdown, respondent  
5 presents evidence that petitioner does have access to library materials. Dkt. 36.  
6 Specifically, respondent submits the declaration of Legal Liaison Officer at Airway  
7 Heights Corrections Center (AHCC), Janet Nelson, who states that:

8 quarantined senior offenders may request priority access and  
9 legal forms and materials will be made available if they have a  
10 verifiable court imposed response deadline of 45 days or less, as  
11 outlined in DOC Policy 590.500. Once confirmed that they meet  
12 this criteria, the following applies: Law Library materials exception  
13 may be requested in writing via Kite or Kiosk; offenders may  
14 check out up to three case law files at one time and retain for up  
to three days, then return, and/or exchange for three new case  
law files at that time; limited legal books are also available for  
check out for up the three days. Mr. Lawson is familiar with this  
priority access as set forth under DOC Policy 590.500, and he has  
requested it on numerous occasions. Mr. Lawson has access to  
Kiosk and kites and has not made any requests for assistance via  
Kiosk or kite since January 2020.

15 *Id.* In reply, petitioner does not specifically dispute Ms. Nelson's assertions but indicates  
16 he was not familiar with these procedures and that these new procedures will be  
17 cumbersome. Dkt. 37. He speculates that the delays in his ability to obtain cases and  
18 research materials will affect his ability to file his response. *Id.* But petitioner's  
19 speculation does not demonstrate the procedures are inadequate or that the requested  
20 relief is actually necessary to prosecuting this action at this point. *Id.* In his reply,  
21 petitioner also requests an "evidentiary hearing" on this issue. For the reasons  
22 discussed above, that request is denied. *Id.*

23 The Court also notes again that for purposes of the current status of this case,  
24 petitioner's only obligation is to address the very limited procedural issue raised in  
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1 respondent's answer -- whether the petition is barred by the statute of limitations. This  
2 should significantly limit the amount of legal research required for the petitioner to file a  
3 response.

4 Accordingly, the Court denies petitioner's motion for an order directing officials to  
5 provide him access to his personal laptop and other materials to augment his access to  
6 legal resources – because it is not properly before the Court in this habeas corpus  
7 action, and also – to the extent it is intended purely as another argument in support of  
8 his motion for counsel and motion for an extension of time – the argument lacks merit.

9 **C. Motion for Counsel**

10 Petitioner also requests that the Court appoint counsel. Counsel need not be  
11 appointed in cases brought under 28 U.S.C. § 2254, unless an evidentiary hearing is  
12 required or such appointment is "necessary for the effective utilization of discovery  
13 procedures." See *McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *United States v.*  
14 *Duarte-Higareda*, 68 F.3d 369, 370 (9th Cir. 1995); *United States v. Angelone*, 894 F.2d  
15 1129, 1130 (9th Cir. 1990); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); Rules  
16 Governing Section 2254 Cases in the United States District Courts 6(a) and 8(c). The  
17 Court also may appoint counsel "at any stage of the case if the interest of justice so  
18 requires." *Weygandt*, 718 F.2d at 754. In deciding whether to appoint counsel, the Court  
19 "must evaluate the likelihood of success on the merits as well as the ability of the  
20 petitioner to articulate his claims pro se in light of the complexity of the legal issues  
21 involved." *Id.*

22 Here, it does not appear at this point that an evidentiary hearing is required as  
23 respondent has raised only the issue of the timeliness of the petition. Petitioner has also  
24

1 not shown a likelihood of success on the merits. As noted above, based upon the  
2 briefing currently before the Court, the issue is whether this petition is barred by the  
3 statute of limitations. Furthermore, up to this point, petitioner has demonstrated a  
4 sufficient ability to articulate his claims in his petition for writ of habeas corpus as well as  
5 in rather lengthy and detailed motions seeking extensions of time, access to his  
6 personal laptop, and appointment of counsel. And, as noted above, respondent  
7 presents evidence -- and petitioner does not specifically dispute that evidence – to  
8 establish that, despite the lockdown, there is a process in place through which petitioner  
9 can access law library materials.

10       The Court is sympathetic to petitioner's assertions that he has been suffering  
11 from a medical condition and is undergoing treatment that causes side effects.  
12 However, as previously noted, at this point, petitioner's only obligation is to address the  
13 narrow procedural issue of whether the petition is barred by the statute of limitations  
14 and petitioner has been given lengthy extensions of time to address this very limited  
15 issue.

16       Accordingly, the Court denies petitioner's motion for appointment of counsel  
17 without prejudice.

18 **D. Request for Extension of Time**

19       Petitioner requests another 180-day extension of time. But petitioner has failed to  
20 establish good cause for another lengthy extension. Petitioner has been dissatisfied  
21 with the amount of law library access he has had, yet the Court notes he has been  
22 given more than a year to draft a response to the very limited issue of the timeliness of  
23 his petition. Furthermore, petitioner does not specifically dispute respondent's evidence

1 that, despite the lockdown at AHCC, there is a procedure in place through which  
2 petitioner can access and check out law library materials.

3 Accordingly, the Court grants petitioner's motion for extension of time, but not for  
4 a 180-day period. Instead, petitioner is ordered to file his response **on or before June**  
5 **26, 2020.** Respondent must file any reply on or before **July 10, 2020.** The Clerk is  
6 directed to re-note the petition to **July 10, 2020.** Petitioner is advised that he should not  
7 expect to be granted any further extensions of time. The Clerk is directed to provide a  
8 copy of this order to all parties.

9 Dated this 6th day of May, 2020.

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11 Theresa L. Fricke  
12 United States Magistrate Judge  
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